STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 26, 2006
v	No. 263948 Calhoun Circuit Court
ANDREW JUNIOR LOGAN, Defendant-Appellant.	LC No. 05-000328-FC

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

A jury convicted defendant of assault with intent to murder, MCL 750.83, and the trial court sentenced defendant as a third habitual offender, MCL 769.11, to twenty-five to fifty years' imprisonment. He appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The complainant, Denise Jones, met defendant as she socialized with her friends in the parking lot of a grocery store. They later went to Jones's apartment where they drank beer and smoked marijuana with Jones's daughter, and her daughter's friend. Jones and defendant subsequently went into her bedroom to watch television. At one point, Jones went to her closet to get a cigarette, but dropped them on the floor. When she bent over to pick them up, defendant approached her from behind, turned her head to the left, and slashed her throat with a knife. Defendant fled as Jones sought help from her daughter, who was asleep in the next bedroom. Jones was taken to the emergency room and underwent surgery to explore the damage to her neck and repair the wound.

After defendant was apprehended, he told police that he stabbed Jones because she attempted to rob him of twenty dollars, using a large meat fork as a weapon. Defendant did not testify at trial, but the defense asserted a theory of self-defense and twice requested that the trial court instruct the jury by reading the standard jury instruction on the use of deadly force in self-defense, CJI2d 7.15, and a person's duty to retreat to avoid using deadly force, CJI2d 7.16. The trial court ruled that the instructions were unsupported by the evidence.

Defendant argues that the trial court erred in failing to instruct the jury on self-defense. We review claims of instructional error de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). A criminal defendant is entitled to have a properly instructed jury consider the evidence against him. *People v Rodriguez*, 463 Mich 466, 472; 620 NW2d 13 (2000). For

that reason, "jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them." *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

Generally, a person acts in self-defense if that person is free from fault and, under all the circumstances, he honestly and reasonably believed that he was in imminent danger of death or great bodily harm and that it was necessary for him to exercise deadly force. *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002); see also CJI2d 7.15. A defendant may not claim self-defense if he used excessive force or was the initial aggressor. *People v Kemp*, 202 Mich App 318, 322-323; 508 NW2d 184 (1993).

We find that the evidence did not support a jury instruction on self-defense or the duty to retreat. The prosecutor presented testimony that clearly showed that defendant was the initial aggressor, and that he attacked Jones from behind for no apparent reason. No evidence was presented to support the defense theory that Jones initiated a confrontation by attempting to rob defendant. Jones testified that she did not have a meat fork in her bedroom, and did not use one to attack defendant. Defendant presented no evidence to contradict her testimony. Moreover, the evidence presented did not support a conclusion that defendant had an honest and reasonable belief that he was in imminent danger of death or great bodily harm and that it was necessary for him to exercise deadly force. To the contrary, the evidence showed that if defendant feared for his safety, he could have left the room instead of attacking Jones. Consequently, the trial court properly refused to grant defendant's request for a self-defense instruction.

We decline to address defendant's assertion that the trial court should have admitted evidence of the complainant's 1985 manslaughter conviction because he failed to raise it in the statement of the issues presented and because he asserts the bare conclusion without adequately briefing his claim. See *People v Mackle*, 241 Mich App 583, 604; 617 NW2d 339 (2000); *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993).

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette